



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/635,777	08/11/2000	Wilburt Juan Labio	GIGA-005/00US	9623

25920 7590 12/10/2003

MARTINE & PENILLA, LLP
710 LAKEWAY DRIVE
SUITE 170
SUNNYVALE, CA 94085

EXAMINER

DUONG, OANH L

ART UNIT	PAPER NUMBER
----------	--------------

2155

DATE MAILED: 12/10/2003

15

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/635,777

Applicant(s)

LABIO ET AL.

Examiner

Oanh L. Duong

Art Unit

2155

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 August 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38,40-54,63 and 64 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-38,40-54,63 and 64 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 8 and 10. 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Group I, claims 1-54 and 63-64 in Paper No. 11 is acknowledged.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 1-3, 6-8, 10-14, 16, 19-21, 23-25, 28-30, 32-35, 38, 40-41, 45-46, 48-50, 52, 54 and 61 are rejected under 35 U.S.C. 102(e) as being anticipated by Swildens et al (Swildens) (US 2003/0065763 A1).

Regarding claims 1, 45 and 64, Swildens teaches a method comprising collecting data about a plurality of computers within the network (e.g., see page 11 paragraph 240), including a network location of each of the plurality of computers (e.g., see figs 6A-6E); selecting at least one computer to be a selected computer, based on the collected data (e.g., see page 1 paragraph 10); and routing a search query from a user to the selected computer via the network location of the selected computer (e.g., see page 6 paragraph 86).

Art Unit: 2155

Regarding claims 2 and 46, Swildens teaches sending a signal to at least of the plurality of computer (e.g., see page 1 paragraph 14); receiving the signal upon its return from the at least one computer (e.g., see page 1 paragraph 14); and forming a profile characterizing the at least one computer based on information provided by the signal (e.g., see page 11 paragraph 250).

Regarding claim 3, Swildens teaches a round trip time measure taken by the signal during its travel to and from the at least one computer (e.g., see page 1 paragraph 15).

Regarding claim 6, Swildens teaches information on the at least on computer's capability to process a search query (e.g., see page 12 paragraph 265).

Regarding claim 7, Swildens teaches information on a number of connected computers encounter by the signal during its travel to and from the at least one computer (e.g., see page 3 paragraph 43).

Regarding claim 8, Swildens teaches information on a number of additional computers connected to the at least one computer (e.g., see page 3 paragraph 43 and page 16 paragraph 408);

Regarding claim 10, Swildens teaches information on which of the plurality of computer are currently connected to the network (e.g., see page 3 paragraph 46).

Regarding claims 12 and 48, Swildens teaches monitoring data exchange between the plurality of computers (e.g., see page 3 paragraph 51).

Regarding claims 13 and 49, Swildens teaches a memory for collecting the measured data wherein the measured data includes information on the content data

available for searching (e.g., see page 3 paragraph 46 and page 15 paragraph 366-369).

Regarding claims 14 and 50, Swildens teaches removing the content data after a predetermined period of time; sending a common user search query into the network on a periodic basis; and storing result of the common search query in the memory (e.g., see page 1 paragraph 13, page 6 paragraph 90 and page 15 paragraph 357).

Regarding claims 16 and 52, Swildens teaches monitoring a current connectivity status of each of the plurality of computer (e.g., see page 13 paragraph 306).

Regarding claim 19, claim 19 is rejected under the same rationale as applied to claim 1 and 14.

Regarding claims 20 and 54, Swildens teaches sending the signal to a plurality of geographical locations, wherein the geographical locations are selected based on their respective proximity to the user (e.g., see page 15 paragraph 366).

Regarding claim 21 Swildens teaches collecting data about the plurality of computer within the network is performed periodically (e.g., see page 1 paragraph 13).

Regarding claim 23, Swildens teaches a system comprising a monitor for measuring data about a plurality of computers within the network (e.g., see page 1 paragraph 13); and a selector for selecting at least one of the plurality of computers to be a selected computer, based on the measured data, and which outputs a network location of the selected computer to the user, to thereby allow the user to connected to the selected computer (e.g., see page 1 paragraphs 10 and 17, page 14 paragraph 337 and page 15 paragraph 372).

Art Unit: 2155

Regarding claim 24, Swildens teaches a profiler which collects the measured data by sending a signal to at least one of the plurality of computer and receiving the signal therefrom, to thereby form a profile of the at least one of the plurality of computers, and a database which stores the data collected by the profiler (e.g., see page 11 paragraph 250).

Regarding claim 25, Swildens teaches a round trip time measure taken by the signal during its travel to and from the at least one computer (e.g., see page 1 paragraph 15).

Regarding claim 28, Swildens teaches information of the at least one computer's capacity of process a search query (e.g., see page 12 paragraph 265).

Regarding claim 29, Swildens teaches information on a number of connected computers encountered by the signal during its travel to and from the at least one computer (e.g., see page 3 paragraph 43).

Regarding claim 30, Swildens teaches information on a number of additional computers connected to the at least one computer (e.g., see page 3 paragraph 43 and page 16 paragraph 408).

Regarding claim 32, Swildens teaches information on which of the plurality of computers are currently connected to the network (e.g., see page 3 paragraph 46).

Regarding claim 33, Swildens teaches a portion of the measured data is collected by monitoring data exchanges in the network (e.g., see page 3 paragraph 51).

Regarding claim 34, Swildens teaches memory for collecting the measured data wherein the measured data includes information on content available for searching on the plurality of computers (e.g., see page 15 paragraph 366-369).

Regarding claim 35, Swildens teaches the memory removes the content data after a predetermined period of time further wherein the memory send common user search queries into the network on a periodic basis and stores the results (e.g., see page 1 paragraph 13, page 6 paragraph 90 and page 15 paragraph 357).

Regarding claim 38, Swildens teaches the monitor determines a current connectivity status of each of the plurality of computers, wherein the selected computer is selected based on the content data and the current connectivity status (e.g., see page 13 paragraph 106).

Regarding claim 40, the claim 40 is rejected under the same rational as applied to claims 23 and 35.

Regarding claim 41, Swildens teaches the profiles are located at a plurality of geographical locations which are remote from one another, wherein the geographical locations are selected based on their respective proximity to a user (e.g., see page 15, paragraph 366).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

Art Unit: 2155

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 11, 17, 47, 53 and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swildens et al (Swildens) (US 2003/0065763 A1) in view of Carpenter (US 6,339,785 B1).

Regarding claims 11, 47 and 63, Swildens teaches collecting a plurality of statistical measures which characterize each of plurality of computers (e.g., see page 11 paragraph 240). Swildens does not explicitly teach ranking the plurality of computers as claimed. However, Carpenter teaches assigning a weighted score to each statistical measure for each of the plurality of computers, combining the weighted score to obtain a rank for each of the plurality of computer, and ranking the plurality of computers according to the weighted scored (e.g., see fig. 3 col. 3 lines 39-52). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine the ranking step in Swildens as taught by Carpenter because such ranking would allow a plurality of computers to be ranked according to their speed from best performance to worst performance. This would have resulted in a file being downloaded to a client faster (Carpenter, col. 1 lines 34-35).

Regarding claims 17 and 53, Swildens teaches collecting a plurality of statistical measures which characterize each of plurality of computers (e.g., see page 11 paragraph 240) and selecting the elected computer (e.g., see page 1 paragraph 10). Swildens does not explicitly teach ranking the plurality of computers as claimed. However, Carpenter teaches assigning a weighted score to each statistical measure for each of the plurality of computers, combining the weighted score to obtain a rank for

each of the plurality of computer, and ranking the plurality of computers according to the weighted scored (e.g., see fig. 3 col. 3 lines 39-52). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine the ranking step in Swildens as taught by Carpenter because such ranking would allow a plurality of computers to be ranked according to their speed from best performance to worst performance. This would have resulted in a file being downloaded to a client faster (Carpenter, col. 1 lines 34-35).

3. Claims 4, 5 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swildens et al (Swildens) (US 2003/0065763 A1) in view of Sieffert et al (Sieffert) (US 6,594,662 B1).

Regarding claims 4 and 5, Swildens does not explicitly teaches information on an amount of content available to the network on the at least one computer. However, Sieffert teaches information on an amount of content available to the network on the at least one computer (e.g., see col. 10 lines 38-40). Therefore, it would have been obvious to a person of ordinary skill in the art at time the invention was made to combine the information in Swildens as taught by Sieffert because such information would enable the system to keep track of the total number of pages assigned to the computer. This would have increased the confidentiality of search parameters (Sieffert, col. 2 lines 14-15).

Regarding claims 26 and 27, Swildens does not explicitly teaches information on an amount of content available to the network on the at least one computer. However,

Art Unit: 2155

Sieffert teaches information on an amount of content available to the network on the at least one computer (e.g., see col. 10 lines 38-40). Therefore, it would have been obvious to a person of ordinary skill in the art at time the invention was made to combine the information in Swildens as taught by Sieffert because such information would enable the system to keep track of the total number of pages assigned to the computer. This would have increased the confidentiality of search parameters (Sieffert, col. 2 lines 14-15).

4. Claims 9 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swildens et al (Swildens) (US 2003/0065763 A1) in view of Welder (US 6,473,855 B1).

Regarding claim 9, Swildens does not explicitly teach information on a frequency with which the plurality of computers are connected to the network. However, Welder teaches information on a frequency with which the plurality of computers are connected to the network (e.g., see col. 2 lines 19-37). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine the information in Swildens as taught by Welder because such information would be used to target content. This would have maximized the efficiency and effectiveness of the content (Welder, col. 15 lines 26-28).

Regarding claim 31, Swildens does not explicitly teach information on a frequency with which the plurality of computers are connected to the network. However, Welder teaches information on a frequency with which the plurality of computers are

Art Unit: 2155

connected to the network (e.g., see col. 2 lines 19-37). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine the information in Swildens as taught by Welder because such information would be used to target content. This would have maximized the efficiency and effectiveness of the content (Welder, col. 15 lines 26-28).

5. Claims 22 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swildens et al (Swildens) (US 2003/0065763 A1) in view of Carpenter (US 6,339,785 B1) in further view of Nagae (US 6,006,248).

Regarding claim 22, Swildens teaches the host monitor collects data about a predetermined number of the plurality of computer a first predetermined time interval (e.g., see page 11 paragraph 240). Swildens does not explicitly teach ranking and collecting data at two different intervals as claimed. However, Carpenter teaches the host selector ranking the computers accordingly, and retaining a set of hub computers which make up a predetermined percentage of the plurality of computers which are most highly ranked (e.g., see fig. 3 col. 3 lines 39-52). Nagae teaches collects data about only the set of hub computers at a second predetermined time interval, wherein the second predetermined time interval is smaller than the first predetermined time interval (e.g., see fig. 29, col. 25 lines 63-67). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine teachings of Swildens with the teachings of Carpenter and Nagae because such ranking would allow a plurality of computers to be ranked according to their speed from best

Art Unit: 2155

performance to worst performance. This would have resulted in a file being downloaded to a client faster (Carpenter, col. 1 lines 34-35); and collecting data at two different intervals would level a load among a plurality of computer thereby to allow each computer to efficiently execute a job application (Nagae, col. 1 lines 56-58).

Regarding claim 44, Swildens teaches the host monitor collects data about a predetermined number of the plurality of computer a first predetermined time interval (e.g., see page 11 paragraph 240). Swildens does not explicitly teach ranking and collecting data at two different intervals as claimed. However, Carpenter teaches the host selector ranking the computers accordingly, and retaining a set of hub computers which make up a predetermined percentage of the plurality of computers which are most highly ranked (e.g., see fig. 3 col. 3 lines 39-52). Nagae teaches collects data about only the set of hub computers at a second predetermined time interval, wherein the second predetermined time interval is smaller than the first predetermined time interval (e.g., see fig. 29, col. 25 lines 63-67). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine teachings of Swildens with the teachings of Carpenter and Nagae because such ranking would allow a plurality of computers to be ranked according to their speed from best performance to worst performance. This would have resulted in a file being downloaded to a client faster (Carpenter, col. 1 lines 34-35); and collecting data at two different intervals would level a load among a plurality of computer thereby to allow each computer to efficiently execute a job application (Nagae, col. 1 lines 56-58).

Art Unit: 2155

6. Claims 18 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swildens et al (Swildens) (US 2003/0065763 A1) view of Scharber (US 6,542,964 B1).

Regarding claims 18, Swildens does not explicitly teach explicitly teach storing a portion of the content data as claimed. However, Scharber teaches explicitly teach storing a portion of the content data which identifies a type of file available for searching on the plurality of computers, wherein the selected computer is selected based in part on the type of file (e.g., see abstract). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine the storing step in Swildens as taught by Scharber because such storing step would allow dynamic protocol selection for a hosting computer. Thus, influence of factors such as network latency, network congestion, server availability during selection is eliminated.

Regarding claims 36, Swildens does not explicitly teach explicitly teach storing a portion of the content data as claimed. However, Scharber teaches explicitly teach storing a portion of the content data which identifies a type of file available for searching on the plurality of computers, wherein the selected computer is selected based in part on the type of file (e.g., see abstract). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine the storing step in Swildens as taught by Scharber because such storing step would allow dynamic protocol selection for a hosting computer. Thus, influence of factors such as network latency, network congestion, server availability during selection is eliminated.

Art Unit: 2155

7. Claims 15, 37 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swildens et al (Swildens) (US 2003/0065763 A1) view of Ishikawa et al (Ishikawa) (JP 11015707 A).

Regarding claim 15, Swildens does not explicitly teach storing a portion of the content data based on previous user requests. However Ishikawa teaches storing a portion of the content data based on previous user requests (see abstract). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine storing a portion of the content data based on previous user requests in Swildens as taught by Ishikawa because it was conventionally employed in the art to allow using limited cache area, thereby reducing data acquisition cost.

Regarding claim 37, Swildens does not explicitly teach storing a portion of the content data based on previous user requests. However Ishikawa teaches storing a portion of the content data based on previous user requests (see abstract). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine storing a portion of the content data based on previous user requests in Swildens as taught by Ishikawa because it was conventionally employed in the art to allow using limited cache area, thereby reducing data acquisition cost.

Regarding claim 51, Swildens does not explicitly teach storing a portion of the content data based on previous user requests. However Ishikawa teaches storing a portion of the content data based on previous user requests (see abstract). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine storing a portion of the content data based on previous user

Art Unit: 2155

requests in Swildens as taught by Ishikawa because it was conventionally employed in the art to allow using limited cache area, thereby reducing data acquisition cost.

8. Claims 42-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swildens et al (Swildens) (US 2003/0065763 A1) view of Adams (SU 6,055,568).

Regarding claims 42 and 43, Swildens teaches the monitor, selector and memory are located on a user computer. However, Adams teaches teaches the monitor, selector and memory are located on a user computer (e.g., see fig. 4 col. 5 lines 54-64). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to intergrate the monitor, selector and memory into a user computer of Swildens as taught by Adams because it was conventionally employed in the art to provide more efficient configuration of computer interconnections (Adam, col. 1 lines 56-57).

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Oanh L. Duong whose telephone number is (703) 305-0295. The examiner can normally be reached on Monday- Friday, 8:00AM - 5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hosain T. Alam can be reached on (703) 308-6662. The fax phone number for the organization where this application or proceeding is assigned is (703) 746-7239.

Art Unit: 2155

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Cal

O.D
December 7, 2003

Hosain Alam

**HOSAIN ALAM
SUPERVISORY PATENT EXAMINER**